

SENATE BILL 738

By Johnson

AN ACT to amend Tennessee Code Annotated, Section 37-1-120 and Title 49, Chapter 10, Part 13, relative to the Special Education Behavioral Supports Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-10-1303(1), is amended by deleting the subdivision and substituting instead the following:

(1) "Behavior intervention training program" means a training program in evidence-based positive behavioral supports, evidence-based crisis intervention, and evidence-based techniques for the safe use of isolation and restraint;

SECTION 2. Tennessee Code Annotated, Section 49-10-1303(3), is amended by deleting the word "child's" and substituting instead the word "student's".

SECTION 3. Tennessee Code Annotated, Section 49-10-1303(4)(A), is amended by deleting the subdivision and substituting instead the following:

(A) Means the confinement of a student alone, with no other students, staff, or persons present, in a room with or without a door or other enclosed area or structure pursuant to § 49-10-1305(g) where the student is physically prevented from leaving because a door, object, or school personnel is blocking the student's exit; and

SECTION 4. Tennessee Code Annotated, Section 49-10-1303(4)(B), is amended by deleting the language "an individual student" and substituting instead the language "a student receiving special education services".

SECTION 5. Tennessee Code Annotated, Section 49-10-1303(6), is amended by deleting the last sentence of the subdivision and substituting instead the following:

Mechanical restraint does not include:

(A) The use of restraints for medical immobilization, adaptive support, or medical protection; or

(B) The use of a seat belt or other device, including, but not limited to, a belting system or harness, to secure a child with a disability during transit on a bus or vehicle operated by an LEA or a provider contracted to serve the LEA's transportation needs;

SECTION 6. Tennessee Code Annotated, Section 49-10-1303(8), is amended by deleting the subdivision and substituting instead the following:

(8) "Physical holding restraint" means the use of body contact by school personnel with a student to restrict freedom of movement or normal access to the student's body, except for:

(A) The holding of a student by an adult in order to calm or comfort the student in the absence of an emergency;

(B) Contact necessary to physically escort a student from one area to another in the absence of an emergency;

(C) Assisting a student in completing a task or response if the student does not resist or if the resistance is of minimal intensity or duration;

(D) Physically redirecting a student if the student does not resist or if the resistance is of minimal intensity or duration; or

(E) School personnel blocking a student's exit or elopement by physically placing themselves in front of the student;

SECTION 7. Tennessee Code Annotated, Section 49-10-1303(9)(F), is amended by deleting the language "intensive behavioral needs; and" and substituting instead the language "intensive behavioral needs;".

SECTION 8. Tennessee Code Annotated, Section 49-10-1303, is amended by adding the following as a new subdivision (10) and redesignating the existing subdivision (10) as subdivision (11):

(10) "Restraint" means a chemical restraint, mechanical restraint, or physical holding restraint; and

SECTION 9. Tennessee Code Annotated, Section 49-10-1304, is amended by deleting subsections (a) and (b) and substituting instead the following:

(a) For a student receiving special education services, as defined in § 49-10-102, isolation or a physical holding restraint may only be used in emergency situations.

(b) Individualized education programs that provide for the use of isolation or a physical holding restraint for certain behavior must contain a data driven functional behavior assessment and a plan for modification of the behavior developed and implemented by a qualified team of professionals.

SECTION 10. Tennessee Code Annotated, Section 49-10-1304(c), is amended by adding the language "a physical holding" immediately before the word "restraint".

SECTION 11. Tennessee Code Annotated, Section 49-10-1304(c)(1), is amended by adding the language "trained and" immediately before the word "certified".

SECTION 12. Tennessee Code Annotated, Section 49-10-1304(c)(2), is amended by adding the language "and certified" immediately after the word "trained".

SECTION 13. Tennessee Code Annotated, Section 49-10-1304(e)(1), is amended by deleting the language "designee who shall record" and substituting instead the language "designee. The LEA shall create a record of".

SECTION 14. Tennessee Code Annotated, Section 49-10-1304(e)(2), is amended by deleting the language "act of physical" and substituting instead the language "physical holding".

SECTION 15. Tennessee Code Annotated, Section 49-10-1304(f)(1), is amended by deleting the language "physical restraint" and substituting instead the language "physical holding restraints".

SECTION 16. Tennessee Code Annotated, Section 49-10-1304(f)(2), is amended by deleting the language "physical restraint or isolation" and substituting instead the language "a physical holding restraint or isolation".

SECTION 17. Tennessee Code Annotated, Section 49-10-1304(f)(4), is amended by deleting the language "restraint and isolation" and substituting instead the language "isolation and restraint".

SECTION 18. Tennessee Code Annotated, Section 49-10-1304(f)(6), is amended by deleting the language "a periodic" and substituting instead the language "an annual".

SECTION 19. Tennessee Code Annotated, Section 49-10-1304(d), is amended by deleting the subsection, substituting instead the following, and redesignating the remaining subsections accordingly:

(d) If school personnel impose isolation or restraint, then the school shall immediately contact appropriate school personnel who are designated under department rules to authorize the isolation or restraint. The school personnel authorized by the department's rules to authorize isolation or restraint must observe and evaluate the student's condition within a reasonable time after the isolation or restraint was used. The school principal, or the school principal's designee, shall notify the student's parent or guardian orally or by written or printed communication on the same day the isolation or restraint was used. The school principal, or the school principal's designee, shall be held harmless for failing to notify a student's parent or guardian in compliance with this subsection (d) if the school principal, or the school principal's designee, made a reasonable effort to notify the student's parent or guardian.

(e) An individualized education plan (IEP) team meeting must be convened within ten (10) days of the use of a restraint if:

(1) The student's IEP does not provide for the use of a physical holding restraint generally, or for the behavior that precipitated the use of the restraint; or

(2) A physical holding restraint is used for an extended period of time, as determined by the state board of education.

(f) An IEP team meeting must be convened within ten (10) days of the use of an isolation if:

(1) The student's IEP does not provide for the use of an isolation generally, or for the behavior that precipitated the use of the isolation; or

(2) An isolation is used for an extended period of time, as determined by the state board of education.

(g) If the behavior that precipitated the isolation or restraint also warrants a change of placement, then the student must have all rights provided to the student under applicable state and federal law.

(h)

(1) School personnel may report a suspected crime by calling a law enforcement official.

(2) School personnel may file a juvenile petition against a student receiving special education services, but only after a manifestation determination review is conducted in compliance with the requirements of 34 C.F.R. § 300.530, and that results in a determination that:

(A) The conduct in question was not caused by, and did not have a direct and substantial relationship to, the student's disability; and

(B) The conduct in question was not the direct result of the LEA's failure to implement the student's IEP.

(3) A school resource officer, as defined in § 49-6-4202, may, upon witnessing an offense, take the student into custody.

SECTION 20. Tennessee Code Annotated, Section 49-10-1305(a), is amended by deleting the word "child's" and substituting instead the word "student's".

SECTION 21. Tennessee Code Annotated, Section 49-10-1305(e)(1), is amended by deleting the language "physical holding".

SECTION 22. Tennessee Code Annotated, Section 49-10-1305(e)(3), is amended by deleting the subdivision.

SECTION 23. Tennessee Code Annotated, Section 49-10-1305(g), is amended by deleting the word "space" and substituting instead the language "enclosed area or structure".

SECTION 24. Tennessee Code Annotated, Section 49-10-1306(b)(2), is amended by deleting the language "physical restraint or isolation" and substituting instead the language "an isolation or restraint".

SECTION 25. Tennessee Code Annotated, Section 49-10-1306(b)(4), is amended by deleting the subdivision and substituting instead:

(4) The time at which the student's parent or guardian was notified on the day the isolation or restraint was used; and

SECTION 26. Tennessee Code Annotated, Section 49-10-1307, is amended by deleting the language "restraint and isolation" wherever it appears and substituting instead the language "isolation and restraint".

SECTION 27. Tennessee Code Annotated, Section 37-1-120(e), is amended by deleting "§ 49-10-1304(d)(3)(B)" and substituting "§ 49-10-1304(h)(2)".

SECTION 28. This act takes effect July 1, 2021, the public welfare requiring it.